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Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1935

No. 649

R. C. TWAY COAL COMPANY, KENTUCKY CARDINAL COAL CORPORATION, HARLAN-WALLINS COAL CORPORATION, ET AL., ... Petitioners,

Versus

SELDEN R. GLENN, Individually and as Collector of Internal Revenue for the District of Kentucky, ... Respondent.

BRIEF FOR STATE OF KENTUCKY AMICUS CURIAE

FOR AMICUS CURIAE:
A. E. FUNK,
Assistant Attorney General of the State of Kentucky, Frankfort, Kentucky.

Supreme Court of the United States

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KENTUCKY CARDINAL COAL CORPORATION,
HARLAN-WALLINS COAL CORPORATION, ET. AL.....*Petitioners*

Versus

SELDEN R. GLENN, Individually and as
Collector of Internal Revenue for
the District of Kentucky.....*Respondent*

MOTION OF THE STATE OF KENTUCKY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF AMICUS CURIAE.

A. E. FUNK, Assistant Attorney General of the Commonwealth of Kentucky, Counsel for State of Kentucky as Amicus Curiae.

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SELDEN R. GLENN, Individually and as
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the District of Kentucky.....*Respondent*

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May it please the Court:

The undersigned as counsel for the Commonwealth of Kentucky, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as amicus curiae.

A. E. FUNK, Assistant Attorney General of the Commonwealth of Kentucky, Counsel for State of Kentucky as Amicus Curiae.

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BRIEF FOR STATE OF KENTUCKY AMICUS CURIAE

May it please the Court:

I

PRELIMINARY STATEMENT

The State of Kentucky being one of the large coal producing states of the Union and being vitally interested by reason thereof in the final determination of the questions involved herein, has, through its Governor, the Hon. A. B. Chadler, requested the Attorney General of Kentucky, the Hon. B. M. Vincent, to file on behalf of Kentucky a brief amicus curiae in this action.

II

STATEMENT OF CASE

Petitioners are engaged in operating bituminous coal mines in Harlan County, Kentucky. Respondent is the Collector of Internal Revenue for the State of Kentucky. The errors assigned (R.220–222) are directed solely to the ruling of the Court holding the Act constitutional and to those necessarily following from such ruling.

III

SUMMARY OF ARGUMENT

1.

Congress has power under either the commerce or taxation clause of the Constitution to regulate production of bituminous coal.

2.

The Federal power to regulate commerce extends to activities relating to production which affects interstate commerce. Bituminous Coal Conservation Act of 1935, approved August 30, 1935 (Section 801 et. seq.), Title 15, U. S. C. A. 49, Statute 991, Public No. 402, Seventy-Fourth Congress, does not violate Amendment Ten to Federal Constitution.

3.

The preservation of the natural resources of the various states, such as coal, should be closely guarded. The power to do so by the states is prohibited by reason of the effect the control would have upon interstate commerce and the public interest in preventing waste and for the proper development and operation of mines and the unfair competition in price cutting and selling below cost, requires control of some character. The control by Federal Government does not violate any State rights.

IV.

ARGUMENT

POINT 1

Congress Has Power Under Either the Commerce or Taxation Clause of the Constitution to Regulate Production of Bituminous Coal

The scope of the power of Congress under the commerce clause is not confined to regulation of transactions occurring in the State and foreign commerce, but extends to all kinds of activities which affect such commerce, even though the activities in question are not themselves in commerce. It is sufficient to state that if mining of bituminous coal affects interstate commerce, it comes within the Federal power over interstate commerce, namely: to enact all appropriate legislation for its protection and advancement, to adopt measures to promote its growth and assure its safety, to foster, protect, control and restrain, etc. (Texas and New Orleans Railway Company v. Brotherhood of Railway and Steamship Clerks, 281 U. S. 548–570).

It has also been held that the sale of coal f. o. b. mines does not affect the interstate character of the transaction.

Flannagan v. Federal Coal Company, 268 U. S. 222–225.
Pennsylvania Railroad Co. v. Clarke Bros. Coal Co., 238 U. S. 456–465–466.
Pennsylvania Railroad Co. v. Sonman Coal Co., 242 U. S. 120–122.

It has long been established that Congress may, as an instrument of its power to regulate interstate commerce, control intrastate activities which affect such commerce. Thus, as an incident to regulating interstate rates, Congress may regulate intrastate rates.

Shreveport Rate Case,
234 U. S. 342.

It may go further and prohibit intrastate rates discriminating against interstate commerce in general rather than against corresponding interstate rates.

Wisconsin Rate Case,
257 U. S. 563.

It may delegate to the Interstate Commerce Commission plenary power to remove such discrimination.

Illinois Commerce Commission,
292 U. S. 474.

In order to safeguard persons and property being transported in interstate commerce, Congress may pass safety regulations designed to protect intrastate as well as interstate commerce.

Texas & Pacific Railroad Co. v. Rigsby,
241 U. S. 33–39.

It may regulate the hours of employment of both interstate and intrastate railroad employees.

Baltimore & Ohio Railroad Co. v. Interstate Commerce Commission,
221 U. S. 212.

It may regulate the wages payable to railroad employees.

Wilson v. New,
242 U. S. 332.

The principle of railroad cases is equally applicable to other activities affecting interstate commerce. Transportation is only one of the phases of commerce which extends beyond the limit of the state.

The above cases are merely applications of the same tests for the determination of the power scope of regula-

tion by Congress, that is, where the subject of regulation is of national rather than local concern.

Gibbons v. Ogden,
9 Wheaton 1, 194.

Minnesota Rate Case,
230 U. S. 352–398.

When intrastate activities extend their effect beyond the limits of the state so that they become matters of national concern, is a question which depends upon the facts relating to those activities. Mining and selling of coal has its influence throughout the entire nation and when practices connected therewith influence the price at which the coal is sold throughout the nation, the transaction then becomes a matter of national concern, subject to Federal regulation and is within the power of Congress to control this industry.

Board of Trade v. Olsen,
262 U. S. No. 1.

Swift and Co. v. United States,
196 U. S. 375.

Stafford v. Wallace,
258 U. S. 495.

Bituminous coal is one of the greatest natural resources of the United States and of the State of Kentucky.

Here in the United States are located approximately one-half of the bituminous coal deposits of the world. Extensive development of these resources has brought into being an industry which represents an extremely large capital investment and supplies the country with the greater portion of its fuel. Coal is mined in about thirty-two states in the Union and on the other hand is consumed in practically every state. The largest con-

sumers are located in the industrial centers and regions distant from the coal fields. Practically all the coal mined is immediately loaded and shipped to points of destination, the greatest portion being hauled to markets in states other than those where the coal is mined, besides the great amount of coal shipped by waterways and the great amount used for means of interstate transportation. The bituminous coal industry is not an isolated industry. It is intimately interwoven with the basic industries of the country. The railroads derive a large portion of their total revenue from the hauling of coal. The iron, steel and other heavy industries rely upon the bituminous coal industry as an important outlet for the material they produce, and consume a great amount of coal in manufacturing their own products.

POINT 2

Federal Power to Regulate Commerce Extends to Activities Relating to Products Which Affect Interstate Commerce.

Bituminous Coal Conservation Act does not violate Amendment 10 of the Federal Constitution. The bituminous coal industry of the United States and the State of Kentucky has been for several years in a deplorable condition, attended by declining production and consumption, low prices, unemployment and increased losses. A great number of mines have been closed, many have been forced into the hands of receivers and bankruptcy and the mining industry of bituminous coal has generally been turned into a definitely unprofitable business. The decline of this industry has affected other industries, and has resulted in widespread unemployment in the industry and has decreased the purchasing power of the employees. Hours of labor have differed widely and the wages paid the employees decreased to a low level. The owners were adversely affected by losses and mines were closed, which resulted in the loss of natural

resources because of prohibited expense of re-opening the mines. This industry is well interwoven with the credit and financial structure of the State of Kentucky and of the nation, and its decline has affected that structure. The decline in the bituminous coal industry throughout the country has been greatly shared by the Kentucky coal fields. Neither the State nor the industry itself were able to curb this distressing trend. The only possible method for preventing the complete destruction of the bituminous coal industry was by Federal regulation. Part Two, marketing provision of the Bituminous Coal Conservation Act, provides for the minimum prices that shall be established. A number of states have recognized by Statute that price cutting or selling below cost or below a fair minimum is an unfair method of competition and the Federal Courts have also recognized that price cutting below a fair minimum restrains trade and continues an unfair method of competition. For example

> Sears, Roebuck and Co. v. Federal Trade Commission, 258 Fed. 307.
>
> United States v. American Naval Stores, et al., 186 Fed. 592.

The power to prohibit unfair methods of competition or restraint of trade is not limited to prohibiting acts which are immediately in interstate commerce. Acts done locally may be prohibited if they adversely affect interstate commerce. There are numerous instances in which regulation of competition in interstate commerce depends upon the prohibition of acts done in intrastate commerce or acts which did not constitute commerce at all. For example the case of

> Federal Trade Commission v. Pacific States Paper Trade Association, 273 U. S. 52.

In the above cited case the thing prohibited or regulated was either a matter of intrastate commerce or of no commerce at all, but affected interstate commerce.

By far the most important industry affected by the bituminous coal industry is transportation. This necessarily affects interstate commerce. It is necessary to regulate wages, and prices to prevent dumping. In the bituminous coal industry in order to effect a stabilization of prices and stabilization of prices is necessary for the rehabilitation of the coal industry which in turn is necessary to protect, advance or insure the safety of interstate commerce in other industries. Such regulation lies within the power of Congress and does not violate Amendment 10 of the Constitution.

POINT 3

Congress Has Power to Regulate the Mining of Bituminous Coal Because of the Public Interest in the Preservation of Natural Resources of Various States.

The control of the bituminous coal industry and the natural resources of the various states is a matter of public interest and affects the entire nation and is beyond the control of the several states. It may be said concerning the problem of regulation by states under their general police power that states are precluded from regulating only where the regulation unduly discriminates against or burdens interstate commerce or where Congress has occupied the entire field of regulation and has thereby excluded regulation by the States. That leaves many fields of activities which are subject to the regulatory power of Congress under the commerce clause but still within the police power of the states.

Dickson v. Uhlmann Grain Co.,
288 U. S. 188.

Swift & Co. v. United States,
196 U. S. 375–400.

In the above cases, the Court said:

> "We do not mean to imply that the rule which marks the point at which State taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the states."

The effect of the bituminous coal industry on interstate commerce is its effect on other industries extensively engaged in interstate commerce. The regulation in the Bituminous Coal Conservation Act is a means of saving the bituminous coal industry and protecting the natural resources of the many states from waste and the business from bankruptcy. Many of the basic industries of the country depend upon bituminous coal for their supply of power. We submit that it was reasonable for Congress to determine that it was necessary and appropriate to enact the Bituminous Coal Conservation Act in order to save this important industry and to protect the natural resources of the nation through the method of codes of fair competition to eliminate waste and injustices engendered by unrestricted competition and to promote and revive the stagnate commerce of this country. It is obvious that wage cutting, price cutting, unfair competition are major factors in the stagnation of the coal industry, all of which affects trade and commerce, and that some protection is required in order to control and protect interstate commerce against further injury of this kind and to revive this industry. Half-way measures, such as attempted state regulation, would be of no avail. The problem in itself is national in scope and calls for application of remedies on a national scale. Congress alone could supply the needed legislation and control. It

would be impossible to have obtained prompt and uniform action by forty-eight state legislatures, neither would it have been possible to have obtained the ends sought by the voluntary single-handed action of trade groups, first because such action to be successful had to be general, and second, because in nearly every trade or industry it would have been made unsuccessful by a selfish minority who would have taken selfish advantage of the situation, blocking the possibility of co-operative action by the majority.

The Bituminous Coal Conservation Act is not impotent under the commerce clause in dealing with the conditions which threatened and did create a paralysis of commerce and it is not impotent in applying remedies deemed necessary and appropriate simply because some of the sources of the difficulty lay outside of interstate commerce or interstate transportation as such. The establishing of minimum prices by the code in the questioned Act necessarily will increase the payment of wages and that in turn will increase the purchasing power or those employed, all of which will eventually remove obstructions to the free flow of interstate commerce. The low wages and the closed mines have been a constant source of trouble in this industry within the State of Kentucky. The result has been unemployment which has in turn increased the load carried by the relief organizations in this State and the National Government. The policy of the Act is to rehabilitate the bituminous coal industry to save and preserve the natural resources of the nation and especially the State of Kentucky from undue waste and insure a living return for the industry and its employees which in turn will guarantee to the nation and to this State an income by way of taxes which otherwise would have been lost, will in effect decrease bankruptcies, assignments and foreclosures.

CONCLUSION

For all the foregoing reasons and by reason of the interest of the State of Kentucky and insisting that the bituminous coal industry is one that affects the entire nation and is a business that should be controlled so that the natural resources of the nation will be preserved, and that the scope of regulation is beyond the control of the various states, and that the Bituminous Coal Conservation Act does not violate any provision of the Constitution of the United States, it is respectfully submitted that the judgment of the lower Court should be affirmed.

Respectfully submitted,

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for the State of Kentucky,
Frankfort, Kentucky.
Counsel for State of Kentucky
Amicus Curiae.